

SECTION-BY-SECTION SUMMARY OF THE "ELECTRIC CONSUMERS' POWER TO CHOOSE ACT OF 1999"

Sec. 1. Short title and table of contents.

This section provides a short title ("Electric Consumers' Power to Choose Act of 1999") and table of contents.

Sec. 2. Findings and purpose.

This section provides the findings and purposes of the Act.

Title I -- Consumer Choice and Competition for Electric Utilities

Sec. 101. Addition of new subtitle to the Public Utility Regulatory Policies Act of 1978.

This section adds a new title to the Public Utility Regulatory Policies Act of 1978 regarding consumer choice:

"Subtitle F - Consumer Choice and Competition for Electric Utilities

"Sec. 151. Definitions.

This section is self-explanatory.

"Sec. 152. Mandatory Open Retail Access for All State-Regulated Local Distribution Companies;

Backup Authority.

This section provides that every State-regulated local distribution company shall provide open, not unduly discriminatory or preferential access to its distribution facilities, under terms and conditions as the State regulatory authority finds necessary and appropriate to ensure consumers (1) may choose from competing electric suppliers and (2) shall have access to local distribution service under rates, charges, terms, and conditions which are comparable, which unbundle electricity from distribution, and are otherwise in the public interest. States are afforded the opportunity to elect to require open, not unduly discriminatory or preferential access to all local distribution facilities of every State-regulated electric utility by no later than January 1, 2002. Such election must be made by January 1, 2001.

For those authorities not electing to provide open access and implement an open access program, the section provides for FERC to exercise authority to open access to State-regulated utility regions. State-regulated utilities may opt out of electing consumer choice by finding, after notice and opportunity for hearing, that making such election will have a negative impact on a class of customers that cannot be mitigated. Such a determination must be filed by the regulatory authority with FERC by January 1, 2001.

"Sec. 153. Mandatory Open Retail Access for All Nonregulated Local Distribution Companies; Backup Authority.

This section provides that every nonregulated local distribution company shall provide open, not unduly discriminatory or preferential access to its distribution facilities to ensure consumers (1) may choose from competing electric suppliers and (2) shall have access to local distribution service under rates, charges, terms, and conditions which are comparable, which unbundle electricity from distribution, and are otherwise in the public interest. Nonregulated electric utilities are afforded the opportunity to elect to require open, not unduly discriminatory or preferential access to all local distribution facilities by no later than January 1, 2002. Such election must be made by January 1, 2001.

For those nonregulated electric utilities not electing to provide open access and implement an open access program, the section provides for legal remedies through the state court system. The only exception to this is an action by a nonregulated electric utility to opt out of the election by finding, after notice and opportunity for hearing, that making such election will have a negative impact on a class of customers that cannot be mitigated. Such a determination must be filed by the regulatory authority with FERC by January 1, 2001.

"Sec. 154. Grandfathering Provision.

This section preserves previously enacted State retail access plans by providing that nothing in this part applies to states which have filed with FERC by January 1, 2001, a notice stating that such state has

adopted retail electric service competition. This section also exempts from this section any nonregulated electric utilities within states filing the FERC notice, as well as those which file such notice.

"Sec. 155. Retail Reciprocity.

This section allows entities (states or nonregulated utilities) which have elected retail choice the authority to bar those who have not elected retail choice from selling to electric customers in their state or utility service region. If an opt out entity later elects retail choice, they are no longer barred from competing in other regions or service areas.

"Sec. 156. Aggregation for Purchase of Retail Electric Energy.

Allows a group of electric customers to buy retail electricity on an aggregate basis if they are served by 1 or more electric utilities in consumer choice regions.

"Sec. 157. State Jurisdiction.

This section provides that state courts shall have jurisdiction over disputes arising from states' or nonregulated utilities' actions in electing to move to retail competition.

"Sec. 158. Relation to NAFTA; Imports.

This new section corresponds to section 155, respecting retail reciprocity, and extends such reciprocity to any foreign person or foreign utility which is a citizen of a nation which has ratified the North American Free Trade Agreement.

"Sec. 159. Privacy of Consumer Proprietary Information.

This section provides for privacy protections for consumer information against unauthorized disclosure to other parties. This includes information relating to the quantity, technical configuration, type, destination, and amount of electricity use.

Sec. 102. Electric Reliability.

"Sec. 401. Electric Reliability Organization and Oversight.

This section requires electric suppliers and transmitting utilities to join an Electric Reliability Organization subject to FERC approval and oversight. The section requires that this organization and affiliated regional reliability entities develop reliability standards and enforcement

mechanisms, and provide advice and recommendations to FERC to ensure that reliability of the nationwide electric energy delivery system is sustained. The section includes detailed procedures governing the interaction between FERC and the Electric Reliability Organization. The language in this section is consistent with consensus language developed by the North American Electric Reliability Council.

"Sec. 402. Application of Antitrust Laws.

This section provides protections from U.S. antitrust laws for activities undertaken by the Electric Reliability Organization and its members under section 401, undertaken in good faith under the rules of the organization.

Sec. 103. Federal Interconnection Authorities.

Allows small scale electric power generators to interconnect with local distribution utilities in accordance with Commission supplied rules to provide a supply closer to the end use.

Sec. 104. Consumer Protection, Market Power and Unfair Trade Practices.

This section requires the Federal Trade Commission to issue rules addressing the form, content, and

timing of information from suppliers directly to consumers, in consultation with FERC, DOE and EPA. Service, price, descriptions of all charges, the type of generation source (renewable, nuclear, coal, gas, etc.) are listed as topics to be addressed by the FTC in its mission to foster fair competition and to protect consumers.

"Sec. 215. Market Power.

This section grants the Commission authority to mitigate retail market power in a number of ways. First, the Commission must allow the utility found to be exercising market power an opportunity to submit a mitigation plan for consideration. If the Commission finds this plan to be insufficient, it must order the utility to 1) participate in a regional transmission organization, 2) forfeit market-based wholesale rates for cost-based rates, and 3) forfeit market-based retail distribution rates for cost-based rates, where this action will mitigate market power.

"Sec. 5A. Electricity Supply Unfair Trade Practices.

Provides for the Federal Trade Commission to establish rules and violation penalties for unauthorized changes in electric suppliers ("slamming") and the unauthorized purchase of goods and services by electric suppliers ("cramming").

Sec. 105. Antitrust Savings Clause.

This section provides that nothing in this part shall be construed to modify, impair, or supersede the operation of the antitrust laws.

Sec. 106. Mandatory Open Access for all Transmitting Utilities.

This section amends the definition of "public utility" in section 201 of the Federal Power Act to extend FERC jurisdiction over the transmission facilities of State and municipal electric utilities, rural electric cooperatives, and PURPA facilities. The section also makes conforming changes and applies the revised definition of "public utility" on enactment. The section clarifies FERC authority to set transmission rates, terms, and conditions in interconnection or wheeling orders by nonjurisdictional transmitting utilities. Finally, the section amends the definition of "transmitting utility" in the Federal Power Act to permit FERC to order retail wheeling orders.

Sec. 107. Clarification of State and Federal Authority over Retail Transmission Services.

This section amends section 201 of the Federal Power Act to address concerns about jurisdiction by establishing a new "bright line" between State and Federal regulatory jurisdiction over bundled and unbundled retail electric sales. The section grants exclusive regulatory authority to FERC over the transmission component of an unbundled retail sale by amending section 201 of the Federal Power Act. This section establishes new definitions necessary to clarify State and Federal regulatory jurisdiction.

Sec. 108. Authority to Establish and Require Independent Regional System Operation.

This section amends section 202 of the Federal Power Act to grant FERC authority to order a transmitting utility to relinquish control or ownership of its transmission facilities to an independent transmission entity. The purpose of this section is to prevent transmission owners from using their transmission facilities for anticompetitive purposes. The section intends that Independent System Operators (ISOs), Transcos, or other independent transmission entities be equally considered by the Commission.

Sec. 109. Special Provisions Respecting BPA and ERCOT Transmission.

This section repeals provisions in section 212 of the Federal Power Act that limit or bar FERC from ordering BPA and ERCOT transmitting utilities to wheel power.

Sec. 110. Electric Company Mergers.

This section amends section 203 of the Federal Power Act to clarify the ability of FERC to review mergers and property dispositions involving generation-only companies and holding companies.

Sec. 111. Regional Transmission Planning Agencies.

This section adds a new section 216 to the Federal Power Act to encourage regional agreements that

facilitate coordination among States with regard to planning transmission, generation, and distribution facilities. The section provides for FERC approval of any such regional transmission planning agreements.

Sec. 112. Universal and Affordable Service.

This section amends section 201 of the Federal Power Act to add a sense of the Congress that every consumer should have access to electricity at reasonable and affordable rates, and FERC and the States should ensure competition does not result in loss of service to rural, residential, or low income consumers.

Sec. 113. Conforming and Technical Amendments to the Federal Power Act.

This section makes conforming and technical amendments to section 316A of the Federal Power Act, which provides for enforcement of FERC wheeling orders.

Sec. 114. Study of Grandfathered Systems.

This section calls for the Commission to conduct a study by January 1, 2005 of the benefits of retail competition for states grandfathered under the Act.

Sec. 115. Effective Date.

This section provides that amendments made are effective on enactment.

Title II -- Provisions Respecting the Public Utility Holding Company Act of 1935

Sec. 201. Short Title.

This section provides a short title for Title II: "Public Utility Holding Company Act of 1998."

Sec. 202. Reform of Holding Company Regulation under PUHCA

This section provides that 18 months after enactment PUHCA will be repealed, except for holding companies with public utility subsidiaries that provide electric service in two or more states that have chosen not to elect retail competition.

Sec. 203. Definitions.

This section provides definitions used in this title.

Sec. 204. Federal Access to Books and Records.

This section grants FERC the authority to inspect books and records of public utility holding companies, associate companies, subsidiary companies and affiliate companies and imposes a confidentiality requirement taken from the confidentiality requirement in section 301(a) of the Federal Power Act. Consistent with current practice under the Federal Power Act, except as may be directed by FERC or the courts, no FERC member, officer, or employee may divulge facts or information obtained during the course of examinations authorized under this section.

Sec. 205. State Access to Books and Records.

This section provides State regulatory commissions authority to inspect books, accounts, memoranda, and other records of a public utility holding company or associate or affiliate companies as may be relevant to costs incurred by an electric utility company or a natural gas company and are necessary to carry out State regulation of public utility companies in a holding company system. The authority is to be exercised by written request and subject to such terms and conditions as are necessary and appropriate to safeguard against unwarranted disclosure of any trade secrets or sensitive commercial information. Federal courts have jurisdiction to enforce compliance with this section. The authority granted by this section is intended to supplement existing State authority over holding company systems, not to expand or limit any existing authority a State commission has to regulate a public utility.

Sec. 206. Exemption Authority.

This section provides FERC authority to exempt certain entities from the requirements of section 205 with respect to access to books and records and requires the exemption of certain entities from those requirements. The section directs FERC to issue a final rule exempting from the requirements of Section 205 any person that is a holding company solely by reason of owning one or more (a) qualifying facilities; (b) exempt wholesale generators; (c) foreign utility companies; or (d) any combination thereof; not later than 90 days after the effective date of this Act.

Sec. 207. Affiliate Transactions.

This section makes explicit that nothing in the Act precludes FERC or a State commission from determining under otherwise applicable law whether a public utility company, natural gas company, or a public utility may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by the public utility company from an associate company.

Sec. 208. Applicability.

This section provides that the Act does not apply to the United States, a State or any political subdivision of a State, any foreign governmental authority not operating in the United States, or any agency, authority, instrumentality, officer, agent or employee of these entities.

Sec. 209. Effect on Other Regulations.

This section provides that nothing in this Act precludes FERC or a State commission from exercising its jurisdiction under otherwise applicable law to protect gas and electric utility consumers from paying too much for goods and services provided by associate companies and from cross subsidization of associate companies by regulated public utility companies.

Sec. 210. Enforcement.

This section addresses enforcement and refers to authorities contained in the Federal Power Act to provide FERC full authority to enforce provisions of the Act.

Sec. 211. Savings Provisions.

This section provides that nothing in this title prohibits a person from engaging in activities or transactions in which it is authorized to engage in on the effective date.

Sec. 212. Implementation.

This section directs FERC to issue regulations to implement this title and submit to Congress recommendations on technical and conforming amendments.

Sec. 213. Transfer of Resources.

This section provides for the transfer of relevant books and records from the Securities and Exchange Commission to FERC.

Sec. 214. Authorization of Appropriations.

This section authorizes any appropriations needed to carry out the title.

Sec. 215. Conforming Amendment to the Federal Power Act.

This section repeals section 318 of the Federal Power Act, which governed conflicts between FERC administration of the Act and SEC administration of the Public Utility Holding Company Act of 1935.

Title III -- Provisions Respecting the Public Utility Regulatory Policies Act of 1978**Sec. 301. Short Title.**

This section provides a short title for title III: "Ratepayer Protection Act of 1998."

Sec. 302. Findings.

This section provides findings relevant to title III.

Sec. 303. Prospective Repeal.

This section provides for a "prospective repeal" of section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), the mandatory purchase requirements, by disallowing service of new facilities and by disallowing the promulgation of new contracts after the date of enactment. The section protects existing contracts by explicating that existing rights and remedies are not affected.

Sec. 304. Recovery of Costs.

This section provides for the Commission to promulgate and enforce rules for the recovery of PURPA stranded costs associated with purchases from a qualifying facility.

Title IV -- Federal Power Marketing Administrations and the Tennessee Valley Authority**Subtitle A -- Tennessee Valley Authority****Sec. 401. Definitions.**

This section provides definitions of terms used in this title.

Sec. 402. Wholesale Competition in the Tennessee Valley Region.

This section repeals sections of the Federal Power Act, relating to interconnection and wheeling orders, that exempt TVA's participation in wholesale competition.

Sec. 403. Tennessee Valley Authority Power Sales.

This section bars the TVA from expanding sales of electric energy to any end use or retail customers. The section sets a regional preference for wholesale power sales by limiting wholesale electric energy sales outside the Tennessee Valley Region to excess electric energy only and allowing these sales to occur after first offered to distributors within the Tennessee Valley Region. The section stipulates that wholesale purchases outside the Tennessee Valley Region are subject to the provisions of Parts II and III of the Federal Power Act, and grants FERC jurisdiction under Parts II and III of the Federal Power Act over the rates, terms and conditions of such sales.

Sec. 404. Prohibition on Acquisition of New Generating Sources.

This section prohibits TVA from acquiring any new source of energy generation that would open TVA up to additional nonrecoverable costs.

Sec. 405. Renegotiation of Long-Term Contracts.

This section requires TVA and its distributors to renegotiate their existing long-term contracts within a year of enactment of the bill. These renegotiations would include remaining contract terms, length of termination notice, the amount of energy that distributors may purchase from non-TVA suppliers, access to the TVA transmission system, and provisions for stranded cost recovery. It allows the parties to submit the issue to FERC for final resolution if they are unable to reach agreement within the timetable.

Sec. 406. Regulation of Tennessee Valley Authority Transmission System.

This section brings the transmission and distribution authority of the TVA under the control of Parts II and III of the Federal Power Act, granting FERC jurisdiction over the rates, terms and conditions of such transmission and local distribution. The section also restricts TVA transmission plant investment to that which is FERC-approved, giving FERC the authority to phase-in any subsequent transmission service rate increases.

Sec. 407. Regulation of Tennessee Valley Authority Distributors.

This section repeals TVA's jurisdiction to regulate municipality or cooperative organization distributors within the Tennessee Valley Region upon election of such municipality or cooperative organization to engage in wholesale energy purchases. Municipalities and cooperative organizations are to be self-governed as prescribed by individual state laws. The section also removes TVA's PURPA ratemaking authority.

Sec. 408. Stranded Cost Recovery.

This section requires FERC to promulgate regulations, within one year of enactment, regarding the recovery of stranded costs (as determined by FERC) imposed on TVA by departing power and transmission customers. It stipulates that any charge assessed by TVA for recovery of stranded costs by retail or wholesale customers be unbundled and, generally, not be imposed later than September 30, 2007.

Sec. 409. Regional Transmission Planning Agencies

This section authorizes, but does not require, TVA to participate in a regional transmission planning agency.

Sec. 410. Application of Antitrust Law.

This section makes TVA subject to the antitrust laws of the United States.

Sec. 411. Disposition of Surplus Local Distribution Facilities.

This section directs TVA to divest itself, under conditions established by FERC, of the following types of local distribution facilities: 1) Facilities used solely for delivery to a single customer, and. 2) Facilities used solely for delivery to a group of customers all of whom are willing to purchase such facilities jointly. Customers entitled to purchase electric energy directly from TVA will have priority in purchasing these facilities. This section also prohibits TVA from constructing after enactment facilities designed to operate at electric voltages below 35 kilowatts.

Sec. 412. Commission Regulations.

This section grants FERC authority to adopt any regulations not required, but necessary, to implement the provisions of this title.

Sec. 413. Savings Provision.

This section makes clear that bonds issued by TVA and any interest thereon shall not become obligations of the United States.

Subtitle B -- Bonneville Power Administration**Sec. 421. Definitions.**

This section provides definitions used in this title.

Sec. 422. Application of Federal Power Act.

This section would subject BPA to relevant provisions of the Federal Power Act for purposes of BPA's transmission systems, but would provide that any determination of the Commission would be subject to a list of conditions, including a requirement that the rates and charges are sufficient to recover existing and future Federal investment in the Bonneville Transmission System.

Sec. 423. Surcharge on Transmission Rates to Recover Otherwise Nonrecoverable Costs.

This section would require the Commission to establish a mechanism that would enable the Administrator to place a surcharge on rates or charges for transmission services over the Bonneville Transmission System under limited circumstances in order to recover power costs unable to be recovered through power revenues in time to meet Bonneville's cost recovery requirements.

Sec. 424. Complaints.

This section clarifies section 306 of the Federal Power Act.

Sec. 425. Review of Commission Orders.

This section clarifies section 313 of the Federal Power Act.

Sec. 426. Antitrust Laws Application to BPA.

This section makes BPA subject to the antitrust laws of the United States.

Sec. 427. Conforming Amendments.

This section makes conforming amendments to the Federal Power Act, the Federal Columbia River Transmission Systems Act, the Pacific Northwest Regional Preference Act, the Pacific

Northwest Electric Power Planning and Conservation Act, and the Bonneville Project Act.

Subtitle C -- Other Federal Power Marketing Administrations

Sec. 431. Definitions.

This section provides definitions used in this title.

Sec. 432. Accounting

This section directs the Secretary of Energy to promulgate rules requiring PMAs to utilize the same accounting principles applicable to public utilities under the Federal Power Act. It also sets up a grievance procedure for interested parties and requires that PMAs, the Bureau of Reclamation and the U.S. Army Corps of Engineers maintain a consistent set of books for purposes of repayment obligations.

Sec. 433. Regional Transmission Planning Agency.

This section authorizes, but does not require, Federal power marketing administrations to participate in a regional transmission planning agency.

Sec. 434. Application of Antitrust Law.

This section makes Federal power marketing administrations subject to the antitrust laws of the United States.

Title V - Environmental Provisions

Sec. 501. Renewable Portfolio Standard

This section adds section 215 to PURPA to provide for a Renewable Portfolio Standard (RPS) only if the national percentage of renewable generation of electricity is less than 3% in 2005. Under this section, the Energy Information Agency (EIA) will continue to measure the percentage of electricity generation in non-hydro renewable technologies (such as solar, biomass, geothermal and wind energy) and will be used as the standard for the trigger for the RPS. If triggered, the RPS will require electricity sellers to cover 3% of their electricity sales with non-hydro renewable technologies beginning in 2005 and sunset in 2015. In addition, the section would allow the Department of Energy to issue proxy credits at 1.5 cents per kilowatt hour to satisfy their RPS requirements. Any revenue generated from this provision would be used to fund DOE research grants for the development of renewable and clean burning fuel technologies.

Sec. 502. Net Metering.

This section adds section 216 to PURPA to provide for consumers who have on-site renewable generating facilities to offset their net costs of energy by selling energy back to the distribution system. It stipulates that this selling back of energy shall be delivered via the same meter through which that energy is purchased.

Title VI -- Amendments to the Internal Revenue Code

Sec. 601. 5-Year Extension of Credit for Producing Electricity from Renewable Resources.

Provides for an extension of production tax credits for electricity produced from wind, solar power, geothermal power and biomass.

Sec. 702. Credit for Energy Efficiency Improvements to Existing Homes.

Provides for tax credits for making energy efficient improvements to existing homes.

Sec. 703. Business Tax Credit for Construction of New Energy Efficient Homes.

Provides for tax credits for the construction of new energy efficient homes.

Sec. 704. Tax Credit for Combined Heat and Power System Property.

Provides for an investment tax credit for heat and power properties.

Sec. 705. Tax-Exempt Bond Financing of Certain Electric Facilities.

Provides that private use limitations are inapplicable to outstanding bonds for public-owned generation, transmission or distribution facilities if used in connection with retail competition or open access transmission. Also, the section provides that tax-exempt financing is unavailable for new generation or transmission facilities; while tax-exempt financing would continue to be available for distribution facilities subject to private use limitations under current law.